

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

ATLANTA PHOTOGRAPHY, LLC	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.:
	:	1:13-cv-02330-AT
IAN MARSHALL REALTY, INC.,	:	
IAN MARSHALL, and ALBERT JONES,	:	
	:	<b>JURY TRIAL DEMANDED</b>
Defendants.	:	
	:	

**DEFENDANT IAN MARSHALL'S MOTION TO DISMISS  
THE FIRST AND SECOND CAUSES OF ACTION OF  
PLAINTIFF'S COMPLAINT**

COMES NOW Defendant IAN MARSHALL (“Defendant Marshall”) through its attorneys of record and respectfully moves the Court pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to enter an Order dismissing Count I (Copyright Infringement) and Count II (Digital Millennium Copyright Act (“DMCA”) Violations) of Plaintiff’s Complaint filed by ATLANTA PHOTOGRAPHY, LLC (“Plaintiff”).

This Motion is made on the grounds that the First and Second Causes of Action of the Complaint, as to Defendant Marshall, fail to state a claim upon which relief may be granted. This Complaint is filed against three separate and distinct defendants. However, not only do the First and Second Causes of Action fail to

allege which Defendants have purportedly committed such wrongs, but also impliedly attempt to implicate Defendant Marshall, personally, for the wrongs of Defendant Ian Marshall Realty, Inc. (“Defendant IMR”).

In the factual background of the Complaint, Plaintiff alleges that Defendant Albert Jones (“Defendant Jones”) – not Defendant Marshall – committed copyright infringement and violated the DMCA by purportedly making unauthorized use of Plaintiff’s photographs. Presumably, Plaintiff’s theory of relief under First and Second Causes of Action is that because Defendant Jones, as an agent of Defendant IMR, purportedly committed such wrongs, Defendant IMR is liable under the doctrine of respondeat superior. However, even if Plaintiff’s allegations are taken as true (contentions which Defendant Marshall does not concede), under no set of provable facts would Plaintiff be entitled to recover against Defendant Marshall personally. Simply put, Plaintiff has made no allegations whatsoever that would allow Plaintiff to pierce the corporate veil and hold Defendant Marshall personally liable for any copyright infringement or DMCA violation committed by either Defendant Jones or Defendant IMR. As such, the First and Second Causes of Action must be dismissed against Defendant Marshall.

This Motion is based on the claims set forth herein, the Memorandum of Law filed concurrently herewith, on all pleadings and other documents filed in this

action, and upon such further evidence and argument, both oral and documentary, as may be presented before or at the time of the hearing on this matter.

Respectfully submitted this 28<sup>th</sup> day of August, 2013.

/Thomas M. Shepherd

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2013, I electronically filed the foregoing MOTION TO DISMISS with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Carolyn E. Wright, Esq.  
[carolyn@photoattorney.com](mailto:carolyn@photoattorney.com)

Respectfully submitted this 28<sup>th</sup> day of August, 2013.

**/Thomas M. Shepherd**

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**CERTIFICATE OF COMPLIANCE**  
**WITH LOCAL RULE 5.1.B**

Counsel for Defendant Marshall hereby certifies that this pleading was prepared in Times New Roman font, 14 point, in compliance with Local Rule 5.1.B.

Respectfully submitted this 28<sup>th</sup> day of August, 2013.

**/Thomas M. Shepherd**

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